

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1126**

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**Introduced by Assembly Members Gordon and Mullin  
(Principal coauthor: Assembly Member Wilk)**

February 22, 2013

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An act to amend ~~Section 40106 of~~ *Sections 40106, 40116.1, 40121, 40180, 40192, 40194, 40200, 40201, 41700, 41721, 41781, 44100, 44101, and 50001 of, and to add Sections 40171.5 and 44017.5 to, the* Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1126, as amended, Gordon. Solid waste: biomass ~~conversion~~.  
*conversion: processed municipal solid waste (MSW) conversion.*

**The**

(1) *The California Integrated Waste Management Act of 1989 (act), which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include, pursuant to specified conditions, not more than 10% through biomass conversion defined as the controlled combustion of specific materials for use in producing electricity or heat.*

This bill would define the term “processed MSW conversion” and “processed MSW conversion facility,” and would make conforming changes to existing definitions with regard to those operations and facilities. The bill would also revise the definition of biomass conversion to specify that it includes other thermal conversion of those materials. The bill would also revise the definition of “composting” to include the anaerobic digestion of organic waste.

(2) The act requires the integrated waste management plan required to be adopted by a county to include a countywide siting element that provides a description of the areas to be used for the development of certain facilities. The act excludes certain solid wastes, for purposes of determining the base rate for the diversion of solid waste, and requires that the amount of solid waste diverted include solid waste diverted from a disposal facility or transformation facility.

This bill would require the countywide siting element to include a description of the areas to be used for the development of adequate processed MSW conversion, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would additionally exclude certain used or waste tires or biomass materials from the solid waste calculation used in that base rate determination and would require the amount of solid waste to include solid waste diverted from a processed MSW conversion facility.

(3) The act requires enforcement agencies to perform specified functions with regard to solid waste handling and the issuance and enforcement of solid waste facilities permits, including the investigation of the operation of a solid waste facility and, in connection with this investigation, requiring a person to furnish information under penalty of perjury. Existing law imposes specified requirements upon solid waste facilities that convert solid waste into energy.

This bill would additionally authorize an enforcement agency to investigate a facility that claims to be a biomass conversion facility and to require information regarding that facility, under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime. This bill would require the storage of the materials used in biomass conversion to be regulated as a transfer or processing station.

(4) Existing law prohibits a person from establishing or expanding a solid waste facility in a county, after a countywide or regional agency integrated waste management plan has been approved, unless the solid waste facility is, among other things, a disposal facility or a transformation facility that meets certain criteria.

*This bill would additionally include, as one of those facilities, a processed MSW conversion facility.*

*(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for specified reasons.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 40106 of the Public Resources Code is  
2     amended to read:  
3     40106. (a) “Biomass conversion” means the controlled  
4     combustion, or other thermal conversion, when separated from  
5     other solid waste and used for producing electricity or heat, of the  
6     following materials:  
7         (1) Agricultural crop residues.  
8         (2) Bark, lawn, yard, and garden clippings.  
9         (3) Leaves, silvicultural residue, and tree and brush pruning.  
10        (4) Wood, wood chips, and wood waste.  
11        (5) Nonrecyclable pulp or nonrecyclable paper materials.  
12     (b) “Biomass conversion” does not include the controlled  
13     combustion of recyclable pulp or recyclable paper materials, or  
14     materials that contain sewage sludge, industrial sludge, medical  
15     waste, hazardous waste, or either high-level or low-level  
16     radioactive waste.  
17     (c) For purposes of this section, “nonrecyclable pulp or  
18     nonrecyclable paper materials” means either of the following, as  
19     determined by the department:  
20         (1) Paper products or fibrous materials that cannot be  
21         technically, feasibly, or legally recycled because of the manner in  
22         which the product or material has been manufactured, treated,  
23         coated, or constructed.  
24         (2) Paper products or fibrous materials that have become soiled  
25         or contaminated and as a result cannot be technically, feasibly, or  
26         legally recycled.

1 SEC. 2. Section 40116.1 of the Public Resources Code is  
2 amended to read:

3 40116.1. (a) “Composting” means the controlled or  
4 uncontrolled biological decomposition of organic wastes.

5 (b) “Composting” also includes the anaerobic digestion of  
6 organic wastes.

7 SEC. 3. Section 40121 of the Public Resources Code is  
8 amended to read:

9 40121. “Disposal facility” or “facility” means ~~any~~ a facility or  
10 location where disposal of solid waste occurs or a processed MSW  
11 conversion facility.

12 SEC. 4. Section 40171.5 is added to the Public Resources Code,  
13 to read:

14 40171.5. (a) “Processed municipal solid waste conversion”  
15 or “processed MSW conversion” means the conversion of solid  
16 waste through a process that meets all of the following  
17 requirements:

18 (1) The waste to be converted is beneficial and effective in that  
19 it replaces or supplements the use of fossil fuels or other standard  
20 commercial fuels.

21 (2) The waste to be converted, the resulting ash, and any other  
22 products of conversion do not meet the criteria or guidelines for  
23 the identification of a hazardous waste adopted by the Department  
24 of Toxic Substances Control pursuant to Section 25141 of the  
25 Health and Safety Code.

26 (3) The conversion is efficient and maximizes the net calorific  
27 value and burn rate of the waste.

28 (4) The waste to be processed contains less than 25 percent  
29 moisture and less than 10 percent noncombustible waste.

30 (5) The waste to be processed that is received at the facility is  
31 handled in compliance with the requirements for the handling of  
32 solid waste imposed pursuant to this division, and no more than  
33 a seven-day supply of that waste, based on the throughput capacity  
34 of the operation or facility, is stored at the facility at any one time.

35 (6) No more than 500 tons per day of waste is converted at the  
36 facility where the operation takes place.

37 (b) “Processed municipal solid waste conversion facility” or  
38 “processed MSW facility” means a facility where processed  
39 municipal solid waste conversion that meets the requirements of  
40 subdivision (a) takes place.

1     *SEC. 5. Section 40180 of the Public Resources Code is*  
2     *amended to read:*

3     40180. “Recycle” or “recycling” means the process of  
4     collecting, sorting, cleansing, treating, and reconstituting materials  
5     that would otherwise become solid waste, and returning them to  
6     the economic mainstream in the form of raw material for new,  
7     reused, or reconstituted products which meet the quality standards  
8     necessary to be used in the marketplace. “Recycling” does not  
9     include transformation, as defined in Section 40201 *or processed*  
10    *MSW conversion.*

11    *SEC. 6. Section 40192 of the Public Resources Code is*  
12    *amended to read:*

13    40192. (a) Except as provided in subdivisions (b) and (c),  
14    “solid waste disposal,” “disposal,” or “dispose” means the final  
15    deposition of solid wastes onto land, into the atmosphere, or into  
16    the waters of the state.

17    (b) For purposes of Part 2 (commencing with Section 40900),  
18    “solid waste disposal,” “dispose,” or “disposal” means the  
19    management of solid waste through landfill—~~disposal or~~  
20    ~~transformation~~ *disposal, transformation, or processed MSW*  
21    *conversion*, at a permitted solid waste facility, unless the term is  
22    expressly defined otherwise.

23    (c) For purposes of Chapter 16 (commencing with Section  
24    42800) and Chapter 19 (commencing with Section 42950) of Part  
25    3, Part 4 (commencing with Section 43000), Part 5 (commencing  
26    with Section 45000), Part 6 (commencing with Section 45030),  
27    and Chapter 2 (commencing with Section 47901) of Part 7, “solid  
28    waste disposal,” “dispose,” or “disposal” means the final deposition  
29    of solid wastes onto land.

30    *SEC. 7. Section 40194 of the Public Resources Code is*  
31    *amended to read:*

32    40194. “Solid waste facility” includes a solid waste transfer  
33    or processing station, a composting facility, a gasification facility,  
34    a transformation facility, *a processed MSW conversion facility*,  
35    and a disposal facility. For purposes of Part 5 (commencing with  
36    Section 45000), “solid waste facility” additionally includes a solid  
37    waste operation that may be carried out pursuant to an enforcement  
38    agency notification, as provided in regulations adopted by the  
39    ~~board~~ *department.*

1     *SEC. 8. Section 40200 of the Public Resources Code is*  
2     *amended to read:*

3     40200. (a) “Transfer or processing station” or “station”  
4     includes those facilities utilized to receive solid wastes, temporarily  
5     store, separate, convert, or otherwise process the materials in the  
6     solid wastes, or to transfer the solid wastes directly from smaller  
7     to larger vehicles for transport, and those facilities utilized for  
8     transformation.

9     (b) “Transfer or processing station” or “station” does not include  
10    any of the following:

11    (1) A facility, whose principal function is to receive, store,  
12    separate, convert, or otherwise process in accordance with state  
13    minimum standards, manure.

14    (2) A facility, whose principal function is to receive, store,  
15    convert, or otherwise process wastes ~~which~~ *that* have already been  
16    separated for reuse and are not intended for disposal.

17    (3) The operations premises of a duly licensed solid waste  
18    handling operator who receives, stores, transfers, or otherwise  
19    processes wastes as an activity incidental to the conduct of a refuse  
20    collection and disposal business in accordance with regulations  
21    adopted pursuant to Section 43309.

22    (4) *A processed MSW conversion facility.*

23    *SEC. 9. Section 40201 of the Public Resources Code is*  
24    *amended to read:*

25    40201. “Transformation” means incineration, pyrolysis,  
26    distillation, or biological conversion other than composting.  
27    “Transformation” does not include composting, gasification,  
28    *processed MSW conversion*, or biomass conversion.

29    *SEC. 10. Section 41700 of the Public Resources Code is*  
30    *amended to read:*

31    41700. Each county shall prepare a countywide siting element  
32    ~~which~~ *that* provides a description of the areas to be used for  
33    development of adequate ~~transformation~~ *transformation, processed*  
34    *MSW conversion*, or disposal capacity concurrent and consistent  
35    with the development and implementation of the county and city  
36    source reduction and recycling elements adopted pursuant to this  
37    part.

38    *SEC. 11. Section 41721 of the Public Resources Code is*  
39    *amended to read:*

1 41721. (a) The countywide siting element shall be approved  
 2 by the county and by a majority of the cities within the county  
 3 ~~which~~ *that* contain a majority of the population of the incorporated  
 4 area of the county except in those counties ~~which~~ *that* have only  
 5 two cities, in which case the element is subject to approval of the  
 6 city ~~which~~ *that* contains the majority of the population of the  
 7 incorporated area of the county. Each city shall act upon the  
 8 countywide siting element within 90 days after receipt of the siting  
 9 element. If a city fails to act upon the siting element within 90  
 10 days after receiving the siting element, the city shall be deemed  
 11 to have approved the siting element as submitted.

12 (b) *Notwithstanding subdivision (a), a siting element providing*  
 13 *for a processed MSW conversion facility is only required to be*  
 14 *approved by the city in which it is located, or if the MSW is not*  
 15 *located in a city, by the county.*

16 SEC. 12. *Section 41781 of the Public Resources Code is*  
 17 *amended to read:*

18 41781. (a) Except as provided in Sections 41781.1, and  
 19 41781.2, for the purpose of determining the base rate of solid waste  
 20 from which diversion requirements shall be calculated, “solid  
 21 waste” includes only the following:

22 (1) The amount of solid waste generated within a local agency’s  
 23 jurisdiction, the types and quantities of which were disposed of at  
 24 a permitted disposal facility as of January 1, 1990. Nothing in this  
 25 section requires local agencies to perform waste characterization  
 26 in addition to the waste characterization requirements established  
 27 under Sections 41030, 41031, 41330, 41331, and 41332.

28 (2) The amount of solid waste diverted from a disposal ~~facility~~  
 29 ~~or facility~~, transformation ~~facility~~ *facility*, or processed MSW  
 30 *facility*, through source reduction, recycling, or composting.

31 (b) For the purposes of this section, “solid waste” does not  
 32 include any ~~solid~~ *of the following*:

33 (1) *Solid waste* ~~which~~ *that* would not normally be disposed of  
 34 at a disposal facility.

35 (2) *Used or waste tires, as defined in Article 1 (commencing*  
 36 *with Section 42800) of Chapter 16 of Part 3, or biomass material,*  
 37 *as described in subdivision (a) of Section 40106, which are*  
 38 *converted at a processed MSW conversion facility.*

39 (c) For the purposes of this chapter, the amount of solid waste  
 40 from which the required reductions are measured shall be the

1 amount of solid waste existing on January 1, 1990, with future  
2 adjustments for increases or decreases in the quantity of waste  
3 caused only by changes in population or changes in the number  
4 or size of governmental, industrial, or commercial operations in  
5 the jurisdiction.

6 *SEC. 13. Section 44017.5 is added to the Public Resources*  
7 *Code, to read:*

8 *44017.5. A location where the materials specified in subdivision*  
9 *(a) of Section 40106 are stored for purposes of biomass conversion,*  
10 *prior to conversion, shall be regulated as a transfer or processing*  
11 *station, as defined in Section 40200.*

12 *SEC. 14. Section 44100 of the Public Resources Code is*  
13 *amended to read:*

14 44100. (a) The enforcement agency, in issuing or reviewing  
15 a solid waste facilities permit or in connection with an action  
16 relating to a solid waste facilities permit or as otherwise authorized  
17 by this division, may investigate the operation of a solid waste  
18 facility, a transfer or processing station, a disposal site, collection  
19 or handling equipment, ~~or a storage area for solid wastes.~~ *wastes,*  
20 *or a facility that claims to be a biomass conversion facility and*  
21 *storage areas associated with the facility.*

22 (b) In the investigation, the enforcement agency may require a  
23 ~~person,~~ *person* who is, or proposes to become, an operator of a  
24 solid waste facility, a transfer or processing station, a disposal site,  
25 collection or handling equipment, ~~or a storage area for solid wastes,~~  
26 *or a facility that claims to be a biomass conversion facility and*  
27 *storage areas associated with the facility* or a person ~~that~~ *who* the  
28 enforcement agency believes may have information concerning a  
29 suspected violation of this division, to furnish, under penalty of  
30 perjury, any nonprivileged technical or monitoring program or  
31 other reports that the enforcement agency may specify.

32 (c) If the owner of property upon which solid waste is unlawfully  
33 stored, stockpiled, disposed, handled, or maintained refuses to  
34 allow or provide the ~~board department,~~ the enforcement agency,  
35 or a contractor of the ~~board department~~ or enforcement agency  
36 with access to enter onto the property and perform all necessary  
37 cleanup, abatement, or remedial work as authorized pursuant to  
38 Section 45000 or 48020, the court may issue the ~~board department,~~  
39 the enforcement agency, or a contractor of the ~~board department~~  
40 or enforcement agency a warrant pursuant to the procedure set



forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure to permit reasonable access to the property to perform that activity, if *both of* the following conditions have been met:

(1) An administrative order requiring corrective action has been issued or obtained pursuant to Section 45000 against the property owner.

(2) The ~~board~~ department or enforcement agency finds that there is a significant threat to public health or the environment.

*SEC. 15. Section 44101 of the Public Resources Code is amended to read:*

44101. (a) ~~In the investigation,~~ *When conducting an investigation authorized by Section 44100,* the enforcement agency may inspect the facility, equipment, or vehicle used for storage, collection, transportation, processing, ~~or disposal~~ *disposal, or biomass conversion* of solid waste, as necessary to ensure compliance with this division and to determine ~~that whether~~ the terms and conditions of solid waste facilities permits are being complied ~~with~~ *with, or if a solid waste facility permit is required for the activity.*

(b) *The enforcement agency may impose fees for conducting an inspection pursuant to this section in accordance with Section 43212 or 43213.*

~~(b)~~  
(c) The inspection *made pursuant to this section* shall be made with the consent of the owner or possessor of the solid waste facilities permit or, if consent is refused, with a warrant duly issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be made without *the consent of the owner or permitholder* or the issuance of a warrant.

*SEC. 16. Section 50001 of the Public Resources Code is amended to read:*

50001. (a) Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the Department of Resources Recycling and Recovery pursuant to Division 30 (commencing with Section 40000), a person shall not establish or expand a solid waste facility,

1 as defined in Section 40194, in the county unless the solid waste  
2 facility meets one of the following criteria:

3 (1) The solid waste facility is a disposal ~~facility or facility~~, a  
4 transformation facility, *or a processed MSW conversion facility*,  
5 the location of which is identified in the countywide siting element  
6 or amendment to that element, which has been approved pursuant  
7 to Section 41721.

8 (2) The solid waste facility is a facility that is designed to  
9 recover for reuse or recycling at least 5 percent of the total volume  
10 of material received by the facility, and that is identified in the  
11 nondisposal facility element that has been approved pursuant to  
12 Section 41800 or is included in an update to that element.

13 (b) Solid waste facilities other than those specified in paragraphs  
14 (1) and (2) of subdivision (a) shall not be required to comply with  
15 the requirements of this section.

16 (c) The person or agency proposing to establish a solid waste  
17 facility shall prepare and submit a site identification and description  
18 of the proposed facility to the task force established pursuant to  
19 Section 40950. Within 90 days after the site identification and  
20 description is submitted to the task force, the task force shall meet  
21 and comment on the proposed solid waste facility in writing. These  
22 comments shall include, but are not limited to, the relationship  
23 between the proposed solid waste facility and the implementation  
24 schedule requirements of Section 41780 and the regional impact  
25 of the facility. The task force shall transmit these comments to the  
26 person or public agency proposing establishment of the solid waste  
27 facility, to the county, and to all cities within the county. The  
28 comments shall become part of the official record of the proposed  
29 solid waste facility.

30 (d) The review and comment by the local task force shall not  
31 be required for an update to a nondisposal facility element.

32 *SEC. 17. No reimbursement is required by this act pursuant*  
33 *to Section 6 of Article XIII B of the California Constitution because*  
34 *a local agency or school district has the authority to levy service*  
35 *charges, fees, or assessments sufficient to pay for the program or*  
36 *level of service mandated by this act or because costs that may be*  
37 *incurred by a local agency or school district will be incurred*  
38 *because this act creates a new crime or infraction, eliminates a*  
39 *crime or infraction, or changes the penalty for a crime or*  
40 *infraction, within the meaning of Section 17556 of the Government*

- 1 *Code, or changes the definition of a crime within the meaning of*
- 2 *Section 6 of Article XIII B of the California Constitution.*

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